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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,861	01/29/2004	James Skinner	22118.0002U2	2987

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EXAMINER	
MANUEL, GEORGE C	

ART UNIT	PAPER NUMBER
3762	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/767,861	SKINNER, JAMES	
	Examiner	Art Unit	
	George Manuel	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 5/18/06.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-25 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 5-12 and 15-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 7,076,288. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to obvious variations of detecting or predicting anomalies or disorders. Cerebral disorders are an obvious variation of a cerebral epileptic seizure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,5-14 and 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demetrescu '697.

Demetrescu discloses analyzing data comprising EEG data. Comparator circuits 114, 116, 118, 120 and 122 operate with respect to different predetermine levels of slope for the differentiated value of the EEG. The comparator circuits function for increasing slope signals; however, they may selectively operate with respect to signals having either a positive or a negative direction of change. One or ordinary skill in the art would have found it obvious to determine whether a slope of the data series is smaller than a predetermine value for the comparator circuits and set the slope to the predetermined value because Demetrescu teaches the differentiator 112 provides an output which is proportional with the slope of the input signal and the comparators are threshold circuits which indicate a predetermined degree of slope in the EEG. The separate comparators are usable to enable separate time-test circuits to accommodate the imposition of different time criteria for testing the occurrence of a spike in accordance with the standards to indicate the onset of a cerebral disorder.

Regarding claims 2 and 3, one of ordinary skill in the art would have found it obvious to set the slope criteria for detecting bovine spongioform encephalitis or

Alzheimer's disease because these diseases have distinct EEG waveforms detectable with the differentiator and comparators set forth in the Demetrescu device.

Demetrescu teaches the selectivity of comparator 116 eliminates the effect of random noise. One of ordinary skill in the art would have found it obvious to divide the EEG data series by two because Demetrescu further teaches short waves generated by random noise do not normally have a duration of six milliseconds and, accordingly, are discriminated in that they will not trigger the single shot 140.

Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demetrescu '697 in view of Skinner '294.

Demetrescu meets all of the claim limitations as discussed above except for using the data processing routine for the EEG data.

Skinner teaches using the data processing routine of claims 4 and 15.

One of ordinary skill in the art would have found it obvious to use the data processing routine of Skinner with the device of Demetrescu for processing the EEG data because Skinner teaches the algorithm is capable of analyzing EEG signals.

Response to Arguments

Applicant's arguments filed 5/18/06 have been fully considered but they are not persuasive. The assertion that a case of prima facia obviousness has not been met is without merit. It is the properties and utilities that provide real world motivation for a person of ordinary skill to make species structurally similar to those in the prior art.

Dillon, 919 F.2d at 697, 16 USPQ2d at 1905; In re Stemniski, 444 F.2d 581, 586, 170 USPQ 343, 348 (CCPA 1971). The prior art need not disclose a newly discovered property in order for there to be a prima facie case of obviousness. Dillon, 919 F.2d at 697, 16 USPQ2d at 1904-05 (and cases cited therein). The slope of the input signal as disclosed in Demetrescu does appear to be determined and used in a sufficiently similar manner to conclude that it is obvious to determine whether a slope is less than a predetermined value. If the claimed invention and the structurally similar prior art species share any useful property, that will generally be sufficient to motivate an artisan of ordinary skill to make a claimed species.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.

George Manuel
Primary Examiner
Art Unit: 3762